

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1794

Introduced by Assembly Member Williams

February 21, 2012

An act to amend Section ~~7125.4~~ of the ~~Business and Professions Code~~, and to amend Section ~~11665~~ 1088.5 of the *Unemployment Insurance Code*, relating to ~~contractors~~ *employers*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1794, as amended, Williams. ~~Contractors: worker's compensation insurance reporting.~~ *Unemployment insurance: use of employer reports: reporting and payroll: enforcement.*

(1) Existing law provides for the payment of unemployment compensation benefits to eligible unemployed individuals, and requires the Employment Development Department to implement and administer the unemployment insurance system in the state. Existing law requires each employer to file with the department a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages, and total wages subject to personal income tax, as provided. Existing law also requires each employer to file with the department specified information on new employees, and authorizes the use of that information for specified purposes including, among other things, administration of the law regarding unemployment compensation benefits. Existing law provides that a person who knowingly accesses, uses, or discloses

confidential information without authorization is guilty of a misdemeanor.

This bill would also authorize the Employment Development Department to provide the specified new employee information to the Joint Enforcement Strike Force on the Underground Economy, the Contractors' State License Board, and the State Compensation Insurance Fund, as provided. By expanding the crime of knowingly and wrongfully accessing, using or disclosing specified information, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(2) Existing law imposes specified regulatory and enforcement responsibilities relating to employers on the Employment Development Department, the Contractors' State License Board, and the State Compensation Insurance Fund.

This bill would require the Employment Development Department, the Contractors' State License Board, and the State Compensation Insurance Fund to execute, on or before July 1, 2013, a memorandum of understanding regarding the administration and enforcement of reporting and payroll duties relating to contractors.

~~(1) Existing law, the Contractor's State License Law, provides for the licensing and regulation of contractors:~~

~~Existing law makes it a misdemeanor for a licensed contractor or a qualifier for a license to file a worker's compensation insurance exemption certificate that is false.~~

~~This bill would also make it a misdemeanor and a cause for disciplinary action for a licensed contractor to fail to notify his or her worker's compensation insurance carrier within 20 days of hiring an employee.~~

~~(2) Existing law, until January 1, 2013, requires an insurer who issues a workers' compensation insurance policy to a roofing contractor holding a C-39 license from the Contractors State License Board to perform an annual payroll audit for the contractor.~~

~~This bill would also require an insurer who issues a workers' compensation insurance policy to any contractor to require that the~~

~~contractor report the hiring of new workers within 20 days and would extend these provisions until January 1, 2015.~~

~~Because this bill would create a new crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1088.5 of the Unemployment Insurance*
2 *Code is amended to read:*
3 1088.5. (a) In addition to information reported in accordance
4 with Section 1088, effective July 1, 1998, each employer shall file,
5 with the department, the information provided for in subdivision
6 (b) on new employees.
7 (b) Each employer shall report the hiring of any employee who
8 works in this state and to whom the employer anticipates paying
9 wages.
10 (c) (1) This section shall not apply to any department, agency,
11 or instrumentality of the United States.
12 (2) State agency employers shall not be required to report
13 employees performing intelligence or counterintelligence functions,
14 if the head of the agency has determined that reporting pursuant
15 to this section would endanger the safety of the employee or
16 compromise an ongoing investigation or intelligence mission.
17 (d) (1) Employers shall submit a report as described in
18 paragraph (4) within 20 days of hiring any employee whom the
19 employer is required to report pursuant to this section.
20 (2) Notwithstanding subdivision (a), employers transmitting
21 reports magnetically or electronically shall submit the report by
22 two monthly transmissions not less than 12 days and not more
23 than 16 days apart.
24 (3) For purposes of this section, an employer that has employees
25 in two or more states and that transmits reports magnetically or
26 electronically may designate one state in which the employer has

1 employees to which the employer will transmit the report described
2 in paragraph (4). Any employer that transmits reports pursuant to
3 this paragraph shall notify the Secretary of Health and Human
4 Services in writing as to which state the employer designates for
5 the purpose of sending reports.

6 (4) The report shall contain the following:

7 (A) The name, address, and social security number of the
8 employees.

9 (B) The employer's name, address, state employer identification
10 number (if one has been issued), and identifying number assigned
11 to the employer under Section 6109 of the Internal Revenue Code
12 of 1986.

13 (C) The first date the employee worked.

14 (5) Employers may report pursuant to this section by submitting
15 a copy of the employee's W-4 form, a form provided by the
16 department, or any other hiring document transmitted by first-class
17 mail, magnetically, or electronically.

18 (e) For each failure to report the hiring of an employee, as
19 required and within the time required by this section, unless the
20 failure is due to good cause, the department may assess a penalty
21 of twenty-four dollars (\$24), or four hundred ninety dollars (\$490)
22 if the failure is the result of conspiracy between the employer and
23 employee not to supply the required report or to supply a false or
24 incomplete report.

25 (f) Information collected pursuant to this section may be used
26 for the following purposes:

27 (1) Administration of this code, *including for the administrative*
28 *purposes of the Joint Enforcement Strike Force on the*
29 *Underground Economy pursuant to Section 329.*

30 (2) Locating individuals for purposes of establishing paternity
31 and establishing, modifying, and enforcing child support
32 obligations.

33 (3) Administration of employment security and workers'
34 compensation programs.

35 (4) Providing employer or employee information to the
36 Franchise Tax Board and the State Board of Equalization for the
37 purpose of tax or fee enforcement.

38 (5) Verification of eligibility of applicants for, or recipients of,
39 the public assistance programs listed in Section 1320b-7(b) of Title
40 42 of the United States Code.

1 (6) *Providing employer or employee information to the*
2 *Contractors' State License Board and the State Compensation*
3 *Insurance Fund for the purpose of workers' compensation payroll*
4 *reporting.*

5 (g) For purposes of this section, "employer" includes a labor
6 union hiring hall.

7 (h) This section shall become operative on July 1, 1998.

8 SEC. 2. *On or before July 1, 2013, the Employment*
9 *Development Department, the Contractors' State License Board,*
10 *and the State Compensation Insurance Fund shall execute a*
11 *memorandum of understanding to share information and*
12 *coordinate enforcement actions against contractors that fail to*
13 *report new employees to the Employment Development Department*
14 *and accurate payroll to the State Compensation Insurance Fund.*

15 SECTION 1. ~~Section 7125.4 of the Business and Professions~~
16 ~~Code is amended to read:~~

17 ~~7125.4. (a) The filing of the exemption certificate prescribed~~
18 ~~by this article that is false, or the employment of a person subject~~
19 ~~to coverage under the workers' compensation laws after the filing~~
20 ~~of an exemption certificate without first filing a Certificate of~~
21 ~~Workers' Compensation Insurance or Certification of~~
22 ~~Self-Insurance in accordance with the provisions of this article, or~~
23 ~~the employment of a person subject to coverage under the workers'~~
24 ~~compensation laws without maintaining coverage for that person,~~
25 ~~constitutes cause for disciplinary action.~~

26 ~~(b) Any qualifier for a license who, under Section 7068.1, is~~
27 ~~responsible for ensuring that a licensee complies with the~~
28 ~~provisions of this chapter, is also guilty of a misdemeanor for~~
29 ~~committing or failing to prevent the commission of any of the acts~~
30 ~~that are cause for disciplinary action under this section.~~

31 ~~(c) It shall be a misdemeanor and a cause for disciplinary action~~
32 ~~for a licensee to fail to notify his or her workers' compensation~~
33 ~~insurance carrier within 20 days of hiring an employee. The remedy~~
34 ~~provided for by this section shall be in addition to, and not limited~~
35 ~~upon, the authority referenced in Sections 11760 and 11880 of the~~
36 ~~Insurance Code for underreporting employees in order to lower~~
37 ~~workers' compensation insurance premiums.~~

38 SEC. 2. ~~Section 11665 of the Insurance Code is amended to~~
39 ~~read:~~

1 ~~11665. (a) An insurer who issues a workers' compensation~~
2 ~~insurance policy to a contractor holding a license from the~~
3 ~~Contractors State License Board shall require the reporting of~~
4 ~~workers within 20 days of hire and perform an annual payroll audit~~
5 ~~for the contractor. The insurer may impose a surcharge on each~~
6 ~~policyholder audited under this subdivision in an amount necessary~~
7 ~~to recoup the reasonable costs of conducting the annual payroll~~
8 ~~audits.~~

9 ~~(b) The commissioner shall direct the rating organization~~
10 ~~designated as his or her statistical agent to compile pertinent~~
11 ~~statistical data on those holding C-39 licenses, as reported by the~~
12 ~~appropriate state entity, on an annual basis and provide a report to~~
13 ~~him or her each year. The data shall track the total annual payroll~~
14 ~~and loss data reported on those holding C-39 licenses in accordance~~
15 ~~with the standard workers' compensation insurance classifications~~
16 ~~applicable to roofing operations. The report shall also be provided~~
17 ~~to the Legislature, in compliance with Section 9795 of the~~
18 ~~Government Code. Reports required under this section for the 2008~~
19 ~~and 2009 calendar years shall be filed by March 1, 2012.~~

20 ~~(c) This section shall remain in effect only until January 1, 2015,~~
21 ~~and as of that date is repealed, unless a later enacted statute, that~~
22 ~~is enacted before January 1, 2015, deletes or extends that date.~~

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.